IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 21516 of 2007(J)

PETITIONER:

---

1. M/S. SARCO GODOWNS,
   PIPELINE ROAD, THRIKKAKARA, COCHIN,
   REPRESENTED BY MANAGING PARTNER,
   SHRI. K.M.ABDUL RAHIM.

2. PRITTO FRANCIS,
   MANAGER, M/S. KIRBY BUILDING SYSTEMS INDIA LTD.,
   PLOT NO.8-15, IDA, PHASE-III, PASHAMYLARAM,
   MEDAK DISTRICT.

BY ADV. SMT.AYSHA YOUSEFF
SMT.MOLLY JACOB
SMT.RABIA BEEGAM T.K.

RESPONDENTS:

---

1. THE COMMERCIAL TAX INSPECTOR,
   COMMERCIAL TAX CHECK POST, WALAYAR.

2. SALES TAX INSPECTOR,
   SALES TAX CHECK POST, WALAYAR, PALAKKAD.

3. STATE OF KERALA, REPRESENTED BY
   SECRETARY TO GOVERNMENT, TAXES DEPARTMENT,
   SECRETARIAT, THIRUVANANTHAPURAM.

BY G.P. SRI. C.K. GOVINDAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR,J.

W.P.C. NO. 21516 OF 2007

Dated this the 12th day of July, 2007

JUDGMENT

Petitioners are challenging Ext.P3 notice and Ext.P6 order issued by the first respondent detaining a consignment of construction materials consigned from Hyderabad to Kochi. First petitioner is the purchaser and second petitioner is the supplier of items from Hyderabad. According to the petitioners, the consignment is pre-fabricated building materials for construction of a godown for the first petitioner. It is not clear from the records produced in Court whether the supplier has undertaken installation of the work making the arrangement "works contract" which attracts tax in the State. Petitioners' further grievance is that invoice shows the total contract value, though consignment detained is only part of the goods covered by invoice. These are matters which cannot be decided by this Court in this proceeding. In the circumstances, I direct the first respondent to release the goods on petitioner furnishing Bank guarantee for Rs. 3.5 lakhs and on furnishing a simple bond without surety for the balance

security amount. File will be referred for adjudication after release of goods. There will be specific direction to the Enquiry Officer to call for the contracts and verify whether second petitioner has undertaken works contract in Kerala, and if so, whether sale takes place in Kerala or not, for fixing liability under the works contract.

W.P. is disposed of as above.

Issue photocopy today itself.

(C.N.RAMACHANDRAN NAIR)
Judge